

126 FERC ¶ 61,103
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 10, 2009

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP08-426-004

El Paso Natural Gas Company
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari
Vice President

Reference: Motion to Place Rates into Effect

Dear Ms. Palazzari:

1. On December 30, 2008, El Paso Natural Gas Company (El Paso) filed revised tariff sheets¹ to comply with the Commission's August 5, 2008 Order (August 5 Order)² to place suspended tariff sheets and rates into effect on January 1, 2009. El Paso states that it is eliminating from rates the costs of facilities not placed in service by the January 1, 2009 effective date. The Commission accepts the revised tariff sheets listed in the Appendix, to be effective January 1, 2009, consistent with the August 5 Order.

2. On June 30, 2008, El Paso filed revised tariff sheets that proposed new services, a rate increase for existing services, and changes in certain terms and conditions of service. In the August 5 Order, the Commission accepted and suspended El Paso's primary tariff sheets, subject to conditions and the outcome of a hearing and technical conference. On December 18, 2008, the Commission issued an order on the technical conference in which it partially accepted and partially rejected the new services and penalties proposed by El Paso.³

¹ See Appendix.

² *El Paso Natural Gas Co.*, 124 FERC ¶ 61,124 (2008).

³ *El Paso Natural Gas Co.*, 125 FERC ¶ 61,309 (2008).

3. In the instant filing, El Paso seeks to eliminate from rates the costs of facilities not placed in service by the January 1, 2009 effective date and to move into effect rates and tariff provisions accepted by the August 5 Order. El Paso states that the rates in the instant filing reflect the cost of facilities projected to be in service by January 1, 2009, as required by the August 5 Order. However, because these rates exceed the Management Adjusted Rate levels as stated on a *pro forma* basis in Exhibit No. EPG-72 of the June 30 filing, El Paso proposes to make effective the lower management adjusted rates. El Paso provides revised statements and schedules that detail the cost of service, cost allocation, and rate design impacts of the removal of the facilities not in service.⁴ El Paso explains that these statements and schedules are for informational purposes only, as they do not impact the management adjusted rates El Paso seeks to move into effect herein.⁵ El Paso is, of course, at risk for any under-collection as a result of its motion to place lower rates into effect than are cost-justified.

4. El Paso states that the majority of the tariff sheets in this filing have not changed since the submission of the June 30 filing. El Paso states that the only changes it made are to adjust tariff sheets to reflect the management adjusted rates and to omit certain tariff sheets in recognition of portions of the December 18 Order.⁶

5. Notice of El Paso's filing was issued on January 2, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the

⁴ On January 13, 2009, El Paso filed revised workpapers to correct an error. El Paso states that with the correction, the revised workpapers continue to reflect rates that exceed the *pro forma* management adjusted rates and, therefore, it is unnecessary to make any changes to the tariff sheets submitted in the December 30, 2008 filing.

⁵ El Paso states that all major projects reflected in the June 30 filing will be in service by December 31, 2008. El Paso also states that the cost of capital expenditures spent through the end of the test period increased \$34.8 million over the capital expenditures reflected in the June 30 filing due to major projects, maintenance projects, and the delay in the sale of the undivided interest in the East Valley Line.

⁶ El Paso states that the tariff sheets submitted in this filing do not include the compliance tariff revisions required by the December 18 Order. El Paso states that it will make those modifications as part of a compliance filing within the 30-day time requirement established in the December 18 Order. El Paso further states that, where a tariff sheet was rejected in the December 18 Order in its entirety, El Paso is not requesting by motion to make that sheet effective.

proceeding will not disrupt this proceeding or place additional burdens on existing parties. Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas Service) and UNS Gas, Inc. (UNS) filed a joint protest, and the Electric Generator Coalition⁷ filed adverse comments.

6. The Competitive Power Suppliers⁸ and El Paso filed answers in opposition to the Texas Gas/UNS protest, and El Paso filed an answer to the Electric Generator Coalition's adverse comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Competitive Power Suppliers' and El Paso's answers and will, therefore, reject them.

7. Texas Gas Service and UNS argue the Commission should reject El Paso's motion because it does not properly reflect the holdings of the September 5, 2008 Order (September 5 Order)⁹ issued in El Paso's prior rate case in Docket No. RP05-422-011, *et al.*, regarding the recovery of capacity costs covered by Article 11.2(b) of the 1996 Settlement.¹⁰ Article 11.2 places certain limitations on the rates that El Paso can charge in future rate cases to shippers that were parties to the 1996 Settlement. Specifically, Article 11.2(b) provides that the rates for any services to certain eligible shippers (Article 11.2(b) shippers) will not include any charges related to the capacity on El Paso's system on December 31, 1995 that becomes unsubscribed or discounted below the maximum allowable rate in the future. Texas Gas Service and UNS argue that the tariff sheets in El Paso's motion improperly reallocate capacity costs covered by Article 11.2(b) to Article 11.2(b) shippers through a discount adjustment related to the Article 11.2(a) rate cap. Texas Gas Service and UNS contend this outcome is inconsistent with the holding in the September 5 Order and, therefore, the filing should be rejected.

⁷ The Electric Generation Coalition includes Blythe Energy, LLC; Dynegy Arlington Valley, LLC; Gila River Power, L.P.; Golden Spread Electric Cooperative, Inc. and GS Electric Generating Cooperative, Inc; and New Harquahala Generating Company, LLC.

⁸ The Competitive Power Suppliers are Dynegy Arlington Valley, LLC; Gila River Power, L.P.; Golden Spread Electric Cooperative, Inc. & GS Electric Generating Cooperative, Inc.; and New Harquahala Generating Company, LLC.

⁹ See *El Paso Natural Gas Co.*, 124 FERC ¶ 61,227 (2008).

¹⁰ See *El Paso Natural Gas Co.*, 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997).

8. The Commission denies Texas Gas Service and UNS' request. El Paso's proposal in this proceeding is neither a violation of the Article 11.2(a) rate cap nor of the Article 11.2(b) limitation on reallocating unsubscribed capacity costs. As a preliminary matter, Article 11.2(b) is not applicable to El Paso's current proposal because El Paso has more than 4000 MMcf/d of 1995 firm capacity subscribed at maximum rates. As we explained in the September 5 Order, only the first 4000 MMcf/d of firm subscribed capacity at maximum rates on the El Paso system is 1995 capacity for purposes of Article 11.2(b).¹¹ Nothing in the Commission's orders or the 1996 Settlement prevents El Paso from proposing rates that recover its cost of service, which is what El Paso is proposing to do here. The Commission therefore rejects Texas Gas Service and UNS' argument that El Paso's proposal to shift costs related to the Article 11.2(a) rate cap is contrary to Article 11.2(b).

9. The Electric Generation Coalition requests that the Commission summarily reject the 250 percent rates for interruptible and short term firm services from the motion rate filing. The Electric Generation Coalition argues that moving those rates into effect now will result in irreparable harm to the Electric Generation Coalition shippers because the market impact of the new rates cannot be mitigated through a refund obligation.

10. The Commission denies the Electric Generation Coalition's request to summarily reject the higher interruptible and short term firm rates here. In the August 5 Order, the Commission found that the 250 percent rates may be unjust and unreasonable and as a result, it suspended the 250 percent rates, subject to refund, effective January 1, 2009, and set those rates for hearing. The issues the Electric Generation Coalition has raised here are also raised on rehearing and will be addressed in the rehearing phase of the proceeding. The 250 percent interruptible and short-term firm rates discussed here, along with all other proposed rates, are subject to the refund protection provided by section 4 of the Natural Gas Act (NGA). Those rates have been suspended for the maximum allowable time period of five months provided for under the NGA. In accordance with section 4, the Commission may not extend the suspension period beyond five months. Therefore, the Commission accepts the revised tariff sheets listed in the Appendix, to be effective January 1, 2009, consistent with the August 5 Order.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.

¹¹ See September 5 Order at PP 96-98.

Appendix

**Second Revised Volume No. 1-A
Tariff Sheets Moved into Effect
With Adjustments Since June Filing
Effective January 1, 2009**

Sub Thirtieth Revised Sheet No. 28
Substitute Seventh Revised Sheet No. 28A
Substitute Fourth Revised Sheet No. 28B
Substitute Fifth Revised Sheet No. 28C
Substitute Fourth Revised Sheet No. 28D
Substitute Fourth Revised Sheet No. 28E
2nd Sub Fourth Revised Sheet No. 28F
Substitute Original Sheet No. 28F.01
Substitute Fourth Revised Sheet No. 28G
Sub Fourth Revised Sheet No. 29.01
Substitute Third Revised Sheet No. 389

**Second Revised Volume No. 1-A
Tariff Sheets Moved into Effect
Effective January 1, 2009**

Thirty-Sixth Revised Sheet No. 1
Original Sheet No. 28H
First Revised Sheet No. 29B
Fourth Revised Sheet No. 101A
Fourth Revised Sheet No. 106
Fourth Revised Sheet No. 110A
Twelfth Revised Sheet No. 111
Tenth Revised Sheet No. 112
Third Revised Sheet No. 112A
Tenth Revised Sheet No. 113
Fourth Revised Sheet No. 114A
Fourth Revised Sheet No. 114B
Fourth Revised Sheet No. 115
Second Revised Sheet No. 125A
Sixth Revised Sheet No. 126
Original Sheet No. 126A
Ninth Revised Sheet No. 128
Eighth Revised Sheet No. 129

**Second Revised Volume No. 1-A
Tariff Sheets Moved into Effect
Effective January 1, 2009**

First Revised Sheet No. 129A
Original Sheet No. 129B
Original Sheet No. 129C
Original Sheet No. 129D
Original Sheet No. 129E
Original Sheet No. 129F
Original Sheet No. 129G
Original Sheet No. 129H
Original Sheet No. 129I
Third Revised Sheet No. 131
Fourth Revised Sheet No. 145B
Fourth Revised Sheet No. 145C
Fourth Revised Sheet No. 145D
Fourth Revised Sheet No. 145E
Fourth Revised Sheet No. 145F
Third Revised Sheet No. 145F.01
Third Revised Sheet No. 145G
Third Revised Sheet No. 145J.01
Third Revised Sheet No. 145K.01
Third Revised Sheet No. 145K.02
Third Revised Sheet No. 146A
Second Revised Sheet No. 146B
Third Revised Sheet No. 147B
Third Revised Sheet No. 147C
Second Revised Sheet No. 147C.01
Original Sheet No. 147C.02
Third Revised Sheet No. 147D
Second Revised Sheet No. 147D.01
Third Revised Sheet No. 147E
Third Revised Sheet No. 147F.01
Fourth Revised Sheet No. 147G
Fourth Revised Sheet No. 147G.01
Fourth Revised Sheet No. 148B
Fourth Revised Sheet No. 148C
Fourth Revised Sheet No. 148D
Fourth Revised Sheet No. 148E
Fourth Revised Sheet No. 148F
Third Revised Sheet No. 148F.01
Original Sheet No. 148F.02

**Second Revised Volume No. 1-A
Tariff Sheets Moved into Effect
Effective January 1, 2009**

Fourth Revised Sheet No. 148G
Second Revised Sheet No. 148G.01
Third Revised Sheet No. 148H
Third Revised Sheet No. 148K.01
Third Revised Sheet No. 148L.01
Third Revised Sheet No. 148L.02
Fifth Revised Sheet No. 150
Third Revised Sheet No. 150B
Third Revised Sheet No. 150C
Third Revised Sheet No. 200A
Fourteenth Revised Sheet No. 202
Original Sheet No. 202.01
Third Revised Sheet No. 202B.01
Fifth Revised Sheet No. 202C
Fourth Revised Sheet No. 202D
Third Revised Sheet No. 202E
Original Sheet No. 202E.01
Second Revised Sheet No. 202F
Original Sheet No. 211B
Eighth Revised Sheet No. 212
Eighth Revised Sheet No. 214A
Sixth Revised Sheet No. 227
Fifth Revised Sheet No. 238
Fourth Revised Sheet No. 239
Fourth Revised Sheet No. 284A
Fifth Revised Sheet No. 285
Sixth Revised Sheet No. 297
Seventh Revised Sheet No. 311
Second Revised Sheet No. 324A
Third Revised Sheet No. 362F
Third Revised Sheet No. 362G
Third Revised Sheet No. 362I
Third Revised Sheet No. 362J
Seventh Revised Sheet No. 363
First Revised Sheet No. 363.01
Third Revised Sheet No. 363A
First Revised Sheet No. 363A.01
Fourth Revised Sheet No. 363
First Revised Sheet No. 363B.01

**Second Revised Volume No. 1-A
Tariff Sheets Moved into Effect
Effective January 1, 2009**

First Revised Sheet No. 363D
Sixth Revised Sheet No. 364
Third Revised Sheet No. 364A
Fourth Revised Sheet No. 365
Fifth Revised Sheet No. 367
Fifth Revised Sheet No. 372
Second Revised Sheet No. 378B
Third Revised Sheet No. 381
Third Revised Sheet No. 383
Third Revised Sheet No. 387
Second Revised Sheet No. 388
Second Revised Sheet No. 388A
Second Revised Sheet No. 388B
First Revised Sheet No. 388C
Second Revised Sheet No. 389A
Second Revised Sheet No. 389B
Second Revised Sheet No. 392A
Fourth Revised Sheet No. 414
Sheet Nos. 459 - 478
Original Sheet No. 479
Original Sheet No. 479A
Original Sheet No. 479B
Original Sheet No. 479C
Original Sheet No. 479D